

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**RICARDO RAUL MARTINEZ
RODRIGUEZ,**
Plaintiff,

VS.

WAL-MART, INC.,
Defendant.

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CIVIL ACTION NO. 1:21-cv-00561

JURY TRIAL REQUESTED

NOTICE OF REMOVAL

Defendant **WAL-MART, INC.**, (hereinafter “Defendant”), files this Notice of Removal of the above-styled action pursuant to 28 U.S.C. § 1446(a) and would respectfully represent and show unto this Court the following:

A. Introduction

1. Defendant has filed its Civil Cover Sheet pursuant to Local Rule 3.1 and Local Rule 81.1. *See Exhibit A.*

2. On or about May 21, 2021, Plaintiff **RICARDO RAUL MARTINEZ RODRIGUEZ** (“Plaintiff”) initiated the state court lawsuit against Defendant in the 250th Judicial District Court of Travis County, styled *Ricardo Raul Martinez Rodriguez v. Wal-Mart, Inc.*; Cause No. D-1-GN-21-002345 (the “State Court Action”). In the State Court Action, Plaintiff alleged a cause of action for premises liability against Defendant. In addition, Plaintiff seeks to recover damages for past and future physical pain and suffering, past and future disfigurement, past and future mental anguish, past and future physical impairment, past and future medical expenses, past loss of wages, loss of household services, and future loss of earning capacity. *See Plaintiff’s Original Petition*, attached hereto as **Exhibit B**.

3. The attorneys involved in the action being removed are listed as follows:

<u>Party and Party Type</u>	<u>Attorney(s)</u>
Ricardo Raul Martinez Rodriguez - Plaintiff	Christine Londergan Texas Bar No. 24109483 DC LAW, PLLC 1012 W. Anderson Lane Austin, TX 78757 Phone: 512-220-1800 Fax: 512-220-1801 Email: christine@texasjustice.com
Wal-Mart, Inc. - Defendant	Brett H. Payne Texas Bar No. 00791417 WALTERS, BALIDO & CRAIN, L.L.P. 9020 N. Capital of Texas Highway Building I, Suite 170 Austin, Texas 78759 Phone: 512-472-9000 Fax: 512-472-9002 Email: paynevfax@wbclawfirm.com

4. The name and address of the court from which the case is being removed is as follows:

250th Judicial District Court
The Honorable Karin Crump
Travis County Courthouse
1000 Guadalupe, 4th Floor
Austin, Texas 78701
Phone: (512) 854-9312
Fax: (512) 854-2469 Mailing Address:
P.O. Box 1748
Austin, Texas 78767

B. The Notice Of Removal Is Timely

5. Defendant's agent was served with citation and a copy of Plaintiff's Original Petition on or about May 25, 2021. *See Exhibit C.* Pursuant to 28 U.S.C. § 1446(b), Defendant's Notice of Removal was filed within thirty (30) days after receipt by Defendant, through service or

otherwise, of a copy of an initial pleading from which it may first be ascertained that the case is one which is or has become removable.

C. Complete Diversity & Amount In Controversy Is Over the Threshold

6. Pursuant to the State Court Action, Plaintiff Ricardo Raul Martinez Rodriguez is an individual residing in Texas.

7. Defendant Wal-Mart, Inc. is now, and was at all times relevant hereto, a foreign for-profit corporation which owns and operates the business commonly known as Wal-Mart in Bentonville, Arkansas. Defendant's corporate headquarters, including officers and directors, is located at 702 S.W. 8th Street, Bentonville, Arkansas 72716-8312. Defendant's registered agent, upon whom Defendant may be served with process, is CT Corporation System, located at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

8. In light of the foregoing, the parties are of completely diverse citizenship. *See* 28 U.S.C. §§ 1332(a), 1332(c)(1) 1441(b).

9. Further, the case involves an amount in controversy of more than \$75,000. *See* 28 U.S.C. § 1332(a). A court can determine that removal is proper from a plaintiff's pleadings if plaintiff's claims are those that are likely to exceed the jurisdictional amount. *See Allen v. R&H Oil & Gas., Co*, 63 F.3d 1326, 1335 (5th Cir. 1995); *De Aguilar v. Boeing Co.*, 11 F.3d 55, 57 (5th Cir. 1993). In the State Court Action, Plaintiff alleges she seeks "monetary relief over Two Hundred Thousand and 00/100 Dollars (\$200,000.00) but not more than One Million and 00/100 Dollars (\$1,000,000.00)" *See Exhibit B*. Thus, the amount in controversy in the instant case meets the requirements for removal.

10. Copies of all pleadings, process, orders, and other filings in the state court action are attached to this notice as required by 28 U.S.C. § 1446(a). *See Exhibit D*.

D. Basis for Removal

11. Because this is a civil action of which the District Courts of the United States have original jurisdiction, this case may be removed by this Court pursuant to 28 U.S.C. § 1446(b). Further, because Plaintiff is a citizen and resident of Texas, Defendant's principal places of business are located in Arkansas, and the amount in controversy exceeds \$75,000.00, the Court has subject matter jurisdiction based on diversity of citizenship and residency. 28 U.S.C. § 1132. As such, this removal action is proper.

E. Filing of Notice with State Court

12. Promptly after filing this Notice of Removal, Defendant will give written notice of the removal to Plaintiff through his attorney of record and to the clerk of the state court action.

F. Prayer

13. **WHEREFORE, PREMISES CONSIDERED,** Defendant Wal-Mart, Inc. requests that this Court proceed with the handling of this cause of action as if it had been originally filed herein, that this Court make such orders, if any, and take such action, if any, as may be necessary in connection with the removal of the state court action to this Court, and that they have such other and further relief to which they may show themselves justly entitled.

Respectfully submitted,

BY: /s/ Brett H. Payne
Brett H. Payne
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Nancy G. Scates
Texas Bar Number 24032249
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Fax: 512-472-9002

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**ATTORNEYS FOR DEFENDANT
WAL-MART, INC.**

CERTIFICATE OF SERVICE

This is to certify that on the 23rd day of June, 2021, a true and correct copy of the above and foregoing was forwarded to all counsel of record in accordance with the Federal Rules of Civil Procedure.

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/s/ Brett H. Payne
BRETT H. PAYNE